APPENDIX A

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

Argued June 12, 1975

August 4, 1975.

Before

Hon. Tom C. Clark, Associate Justice (Retired)*
Hon. Luther M. Swygert, Circuit Judge
Hon. Walter J. Cummings, Circuit Judge

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

No. 75-1205 vs.

JOSEPH C. TARQUENO,

Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

(74 Cr 553)

Bauer D. J.

ORDER

Appellant was convicted by a jury on two counts of counterfeiting in violation of 18 U.S.C. §473. He was sen-

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*Associate Justice Tom C. Clark, United States Supreme Court, Retired, sitting by designation.

tenced to a two-year prison term on Count One and a consecutive term of three years probation on Count Two. He raises three claims of error: (1) improper prosecutorial closing argument; (2) exclusion of evidence of entrapment; and (3) improper instructions on intent. We find each of the contentions frivolous and affirm.

On two separate occasions in 1973 (November 19th and December 14th), Tarqueno transferred counterfeit money to an undercover agent. On the first occasion, eight counterfeit ten-dollar bills were transferred for $40 in currency and, on the second, $2,000 in counterfeit money was transferred for $850. Appellant's first claim as to the prosecutor's expression of personal beliefs and opinions in his argument to the jury, citing *United States* v. *Wasko*, 473 F. 2d 1282, 1283 (7th Cir. 1973), is misplaced. Here, as the trial court found, the prosecutor was drawing reasonable inferences from the evidence. Likewise the prosecutor's remarks on the entrapment defense, rather than being comment on the failure of Tarqueno to testify, merely pointed out the lack of evidence on that issue. While comments by the prosecutor such as "There is no question the defendant is guilty beyond not only a reasonable doubt, but in my mind any shadow of a doubt" might well be reversible error in a closer case, here there was no prejudice; the evidence of guilt was overwhelming. Indeed, Tarqueno offered no credible defense at all, and it is inconceivable that the jury could have returned any other verdict than guilty. *See United States* v. *Trutenko*, 490 F. 2d 678, 679-680 (7th Cir. 1973); *United States* v. *Sawyer*, 347 F. 2d 372 (4th Cir. 1965). The instructions here followed those in *Trutenko* closely.

The short answer to the entrapment claim is that, at the time of the transactions involved, Tommy Powers, the

source of the counterfeit money, was not a Government informer, and entrapment as a defense will not lie.

Appellant's final point regarding proof of intent is ludicrous. He admits that he knew that the notes involved were counterfeit, but claims that he never expected the Government agent to pass them. The evidence itself, however, is to the contrary. The federal agent testified that, at the first sale there was "a general discussion about how things would go if we got rid of it, if we could deal with some more, and what volume." The agent further testified that he told Tarqueno at the second meeting: "I had gotten rid of the stuff * * *. And it went pretty good * * *."

Affirmed

APPENDIX B

§ 473. Dealing in counterfeit obligations or securities

Whoever buys, sells, exchanges, transfers, receives, or delivers any false, forged, counterfeited, or altered obligation or other security of the United States, with the intent that the same be passed, published, or used as true and genuine, shall be fined not more than $5,000 or imprisoned not more than ten years, or both. June 25, 1948, c. 645, 62 Stat. 705.